[2026] JMSC Civ.33

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. SU2023CV03911

BETWEEN	**PAULETTE MAY BROOKS-MULLINGS**	**1ST CLAIMANT**
A N D	**WELDON CONSTANTINE MULLINGS**	**2ND CLAIMANT**
A N D	**ANNETTE ALICIA WATSON-COPELAND**	**DEFENDANT**

TRIAL IN CHAMBERS (VIA VIDEO CONFERENCE)

Mr. Lorenzo Eccleston instructed by Temple Law for the Claimants

Mr. Andre Moulton with Ms. J'Nae Peart instructed by Knight, Junor & Samuels for the Defendant

HEARD: February 3 and 5, 2026 DELIVERED: March 12, 2026

Land Law – Recovery of Possession – Whether or Not the Claimants are Entitled to Recovery of Possession of Property from the Defendant who is a Joint Owner of the Property

Equity – Constructive Trust – Whether or not the Defendant Holds the Beneficial Interest in the Property in Trust for the Claimants – Whether or not the Claimants Have Rebutted the Presumption of Joint Legal and Beneficial Ownership in the Property Where Parties are Registered as Joint Tenants on the Registered Title

DALE STAPLE J

BACKGROUND

[1] This is a case of the unravelling of tangled lives and tangled webs. The 1st Claimant and the Defendant were friends for a large portion of their lives. Indeed, the Defendant, the younger of the two, refers to the 1st Claimant as her "aunt". They

were business partners, and seemed to have been good friends at one point. Now the relationship is fractured. The 2nd Claimant, the 1st Claimant's husband, has been brought into this fray.

[2] As with the end of most relationships, there are pieces to be picked up. Among those pieces is a property in Montego Bay in the parish of St. James. It is Lot 637, part of Bellefield Estate now called Montego Bay West Village, Phase 2 registered at Volume 1509 Folio 516 of the Register Book of Titles.

[3] The said parcel of land is registered in the joint names of the parties. The registration was done on the 17th November 2017. The title is exhibited at PBM 1 of the joint affidavit of the Claimants.

[4] Now, the Claimants seek to ask this court to declare that the Defendant was not truly an owner of the property and that she holds the property on trust for them.

[5] They have sought a number of orders and declarations in their Fixed Date Claim Form filed on the 5th December 2023. I will not recite them here. Key amongst these claims is an order for the severance of the joint tenancy. Whatever the result of the claim, the joint tenancy between the three current joint tenants has to be severed. The question will be the terms of the severance.

[6] The Defendant's response to these 13 claims is that she is lawfully the owner of the property jointly with the Claimants; she does not owe them any rent or mesne profit for her occupation of the property as an owner.

[7] The Court is now called upon to resolve the several issues joined between the parties.

[8] I am grateful to counsel for their submissions and bundles. I wish to assure them that I have read them thoroughly and considered them carefully in coming to my decision.

ASCERTAINING OWNERSHIP OF LAND

[9] In Jamaica, where there is property brought under the operation of the **Registration of Titles Act**, it is the ownership on the face of the title that is recognised until the contrary is proven.

[10] The title is indefeasible except by fraud or where the title is defeated by a claim for adverse possession. This is confirmed by section 68 of the **Registration of Titles Act**[1].

[11] However, the fact of ownership can be challenged. The decision in *Gardener* made it clear that the registration of the names on the title is not conclusive of how the **beneficial** (emphasis mine) interest in the property is to be held.

[12] The person asserting that the beneficial interest ought to be different from the legal interest has the legal and evidential burden to satisfy the Court, on the balance of probabilities, that the beneficial ownership should be different from the legal ownership.

[13] In the case of ***Jeniffer Johnson v Horace Boswell***[2] the Court of Appeal confirmed this position. In this case, the appellant and respondent were in an intimate relationship. Together, they decided to purchase a house in Jamaica. The parties eventually found a home, secured a mortgage to purchase the property and were registered on the title as tenants in common in equal shares.

[14] Eventually, the relationship between them soured and came to an end. The Respondent then commenced proceedings in the Supreme Court challenging the Claimant's claims for an equal share in the property.

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[1] See also the decision of the Privy Council in *Gardener et al v Lewis* (1998) 53 WIR 236
[2] [2022] JMCA Civ 31

[15] After trial, the learned trial judge found that the Appellant only had a 20% share in the property whilst the Respondent had an 80% share. The Appellant appealed. The Court of Appeal determined that the sole true issue in dispute was whether or not the learned trial judge erred in awarding the Respondent the 80% share.

[16] The Court of Appeal, ultimately, decided that the learned trial judge erred in finding that there was no common intention to share the legal and beneficial interest in the property equally between them. They found that the Respondent had to show, "…*clear and cogent evidence*[3]" of his entitlement to a share greater than the 50% and he failed so to do.

[17] One of the interesting points made by the Court of Appeal was that the learned trial judge first had to determine whether or not the evidence revealed an agreement or understanding as to how the beneficial interest in the property was to be shared between the parties. In this case, the Court of Appeal determined that there was evidence of such an understanding and that the learned judge erred in not accepting and acting on what they found was clear evidence of such an understanding.

[18] In the later case of ***Jones v Kernott***[4], the Supreme Court of the United Kingdom ('UKSC') revisited the principles in ***Stack v Dowden***[5]. The UKSC made it clear that the principles applied in a case where a family home is bought in the joint names of a cohabiting couple who are both responsible for any mortgage, but without any express declaration of beneficial interest. Whilst the case itself involved a discussion on domestic property, a key principle extracted from the case was that the parties' actual common intention was to be deduced or inferred objectively from their conduct. This conduct was to be assessed over the entire course of dealing with the property and not necessarily confined to the initial

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[3] Ibid at para 132
[4] [2011] UKSC 53
[5] [2007] UKHL 17

acquisition. This position has been cited with approval by our Court of Appeal in *Johnson v Boswell*[6].

[19] Lord Walker and Lady Hale, in delivering the joint judgment of the Court in *Jones v Kernott* said as follows[7]:

> *"In those cases where it is clear either (a) that the parties did not intend joint tenancy at the outset or (b) had changed their original intention, but it is not possible to ascertain by direct evidence or by inference what their actual intention was as to the shares in which they would own the property, "the answer is that each is entitled to that share which the court considers fair having regard to the whole course of dealing between them in relation to that property"…In our judgment, "the whole course of dealing…in relation to the property" should be given a broad meaning, enabling a similar range of factors to be taken into account as may be relevant to ascertaining the parties' actual intentions."*

[20] This represents, in my view, the affirmation of a revolutionary upgrade from the ***Stack v Dowden*** model which represented the law for so many years. According to Lord Collins, "…*in joint name cases, the common intention to displace the presumption of equality can, in the absence of express agreement, be inferred (rather than imputed: see para 31 of the joint judgment) from their conduct, and where, in such a case, it is not possible to ascertain or infer what share was intended, each will be entitled to a fair share in the light of the whole course of dealing between them in relation to the property*".[8]

[21] The position now seems to be that the Court must still search for the result which reflects what the parties must, in the light of the conduct, be taken to have intended. Lord Kerr went on to say[9] that the search starts with the presumption of equal shares if they are joint tenants. But the presumption can be displaced by showing

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[6] Supra n. 2 at para 102.
[7] Supra n 4 at para 51
[8] Ibid at para 64
[9] Ibid at para 68

either a different common intention at the point of acquisition of the property or that they later formed the common intention that their holdings should be different.

[22] So even if there was no express intention to share at the point of acquisition, the Court can examine the conduct of the parties over the course of dealing with the property and assign the parties a share that the Court considers fair. In other words, as Lords Kerr and Wilson put it[10], the Court is to impute an intention that the Court finds fair where the evidence does not allow the Court to infer an intention which the parties decided.

[23] Where the property concerned is not the family home in the name of one person, the starting point is different. In such a case, the first issue is whether it was intended that the other party have any beneficial interest in the property at all. If there was such an intention, then the second issue is the determination of that interest. There is no presumption of joint ownership there. It makes sense as, in my view, there is only one registered owner.

[24] The evidence to rebut the presumption of a common intention to share must be cogent.

[25] Despite what was said by Lord Walker and Lady Hale at paragraph 51 of the judgment (that these principles apply in a case where a family home is bought in the joint names of a cohabiting couple), our Court of Appeal has held that the principles should still apply even in cases where the property in question is not the matrimonial home and the parties are not in a marriage or even in an intimate relationship[11].

[26] Therefore, in my view, to borrow from Lady Hale and Lord Walker in the ***Jones v Kernott*** decision as well as the more recent Court of Appeal decision of ***Johnson***

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[10] Ibid at paras 73-75 (per Lord Kerr) and at para 89 (per Lord Wilson)
[11] See the decision of *McCalla et al v McCalla* [2012] JMCA Civ 31 at para 28.

v Johnson[12], these are the considerations where property is held in the joint names of parties and there is a dispute as to whether the beneficial ownership is the same as that on the face of the title:

a) Start with the presumption that equity follows the law and there is joint ownership in law and in equity.

b) This presumption can be displaced by showing either:
    i) That the parties had a different **common intention** at the time when they acquired the home; or
    ii) That they **later** formed the **common intention** that their respective shares should change. (emphases mine)

c) The common intention is to be deduced objectively from their words and, in the absence of express words or any words at all, their conduct.

d) The intention is the intention reasonably understood by the other party to be manifested by that other party's **words and conduct notwithstanding** (emphasis mine) that he did not consciously formulate that intention in his own mind or even acted with some different intention which he did not communicate to the other party.

e) The conduct is to be assessed over the entire course of dealing with the property by the parties.

f) If it is clear that there was either:
    i) no intended joint tenancy at the outset;
    ii) or that they had changed their original intent, but you cannot ascertain, either by direct evidence or inference, what the actual intention was as to the shares in which they would hold the property,

    then each owner is entitled to the share that the court considers fair, having regard to the whole course of dealing between them.

g) It is important to note that this fair share may be 100% in favour of one party or the other.

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[12] [2023] JMCA Civ 10

h) Financial contributions are relevant, but there are many other facts which may enable a court to decide what shares were either intended (if such intention was known or ascertainable) or fair (where the intention is not known or ascertainable).

THE EVIDENCE AND FINDINGS OF FACT

[27] The evidence comes from the Claimant, her husband, one witness and the Defendant. The evidence was contained in multiple affidavits.

[28] It is my view that nothing much turned on the evidence from the Claimant's witness called on the day of trial. So I will not focus much of this analysis on his evidence.

[29] The fact, as is obvious and not contested, is that the Claimants and the Defendant are all titular owners of the disputed property as joint tenants in equal shares. So I am going to presume that all three shared the beneficial interest in the same equal shares. It is therefore for the Claimants to satisfy me that it was more than likely that this presumption should be rebutted and to find that there was never any common intention for the Claimants and the Defendant to share the property in this way.

[30] I propose to conduct my analysis of the evidence based on the various timelines as established in the law as set out above. So I will look at the evidence of what happened at the date of acquisition to analyse and determine whether there was any evidence of a common intention to hold the beneficial interest in a different manner from the legal interest.

[31] If no such evidence can be found directly or by inference, I will then examine the conduct of the parties throughout the course of their dealings with the property to determine if there was any common intention to hold the property in separate shares after the stage of acquisition.

[32] Finally, if I cannot identify any common intention at the outset or I find that the intention had changed but I cannot identify the share of each party, I will examine

the evidence to determine what I find the fair share should be as between the parties.

THE ACQUISITION STAGE

[33] The Claimants, in their first affidavit sworn on November 29, 2023, said that in or about 2016 they were looking for a property to buy in Jamaica for their home, when they visited and eventually as their retirement home.

[34] They said they became aware of the disputed property being sold by Gore and contacted the Defendant, who agreed to act as their agent. This was said to have been done orally in 2016 and it was put into the form of a written Power of Attorney dated August 7, 2017. It was exhibited at PBM-2. I have looked at that document and I doubt its efficacy and validity. Firstly, only the 1st Claimant is named the donor of the power. Therefore, the Defendant could not be the agent of both Claimants by this document. Secondly, contrary to the requirements of s. 6 of the **Probate of Deeds Act** and s. 152 of the **Registration of Titles Act**, there was no certificate accompanying the execution of the deed by the notary public.

[35] The Defendant denied being their agent and denied agreeing to any such arrangement. It was put to her in cross-examination that she received the Power of Attorney, but whilst she accepted that she received it, she denied that she used same. It is true that there were some acts the Defendant did for the Claimants. But it is my finding that these acts were done in furtherance of the acquisition of the property and later its upkeep as an owner and not as the agent of the Claimants.

[36] The Defendant disputed that it was the Claimants who introduced her to the property. She said, in her first affidavit in response, that it was she who had introduced the 1st Claimant to the property, having obtained information on the development from a Rena Reid. She said she contacted the 1st Claimant and invited her to join in on equal standing on the investment as joint tenants. She explained that she did this because the 1st Claimant was a long-standing family

friend and she was concerned that the 1st Claimant had no investment to sustain her in her waning years.

[37] In cross-examination of the 1st Claimant, this was revealed:

> Q: Look at paragraph 7a of your joint affidavit. When in 2016 are you saying that you and Mr. Mullings looked for the property?
> A: It was around 2015. I had that idea a long time ago. It was around in the summer time of 2016 that we started looking for the property.
>
> Q: How did you start to look for the property?
>
> A: My cousin know the lady that work for Gore. He asked her if she had anything coming up. She said yes. It didn't have a name but it was close to Granville.

[38] The cross-examination of the 1st Claimant, as highlighted above, shows an internal inconsistency in her evidence. She said she started looking for the property in summer of 2016. Yet she said the deposit was paid on January 1, 2016. This is incongruent. I acknowledge that she said here that she started looking for the property in 2015, but then she switched back to 2016 and her affidavit evidence also said 2016. There was no clarification in re-examination. I also rejected her evidence that the property did not have a name by 2016.

[39] According to the Defendant, she said it was agreed between herself and the 1st Claimant that the 2nd Claimant, as the 1st Claimant's husband, would join in the investment as well.

[40] The Claimants' version is that they had the Defendant on the property as a matter of convenience since she was their local agent who had their instructions to do **all paperwork** (emphasis mine) and all day-to-day communication with the bank on their behalf.

[41] It is my finding that the Claimants are not speaking the truth about what was agreed between them. I prefer the evidence of the Defendant. The explanation as provided by the Claimants for the Defendant's presence on the title as a joint tenant does not accord with logic or common sense. There would have been no need for the

Defendant to be on the title simply because she was an agent or because she had instructions to do all the paperwork with the bank. The material paperwork was signed by all the parties (see the agreement for sale as exhibited at PBM-3(a) of the Claimants' joint 1st Affidavit; and the mortgage documents with Sagicor Bank exhibited at AAWC-4 of the 1st Affidavit of the Defendant in Response).

[42] The Defendant's explanation makes far more sense logically. It was a joint venture agreement between herself and the 1st Claimant and they added the 2nd Claimant afterward. I am also satisfied, on the balance of probabilities, that it was the Defendant that looked for the property on her own initiative and it was she that introduced the 1st Claimant to the venture.

[43] When pressed in cross-examination by Mr. Moulton, the 1st Claimant agreed that she intended that the property be the retirement home for herself and the 2nd Claimant. This stands in stark contrast to paragraph 41 of the first submissions by the Claimants filed on the 6th May 2025, where counsel for the Claimants said that the evidence of the Claimants was that the property was rental property and they used the rental income towards the mortgage. The evidence is the complete opposite of this submission. It was never purchased as rental property initially. But, as they themselves stated, it was somewhere they could go when they visited Jamaica and at which they intended to stay when retired.

[44] But she also agreed that because of the joint tenancy in which the property was registered, Ms. Copeland would get this property should the 1st Claimant and her husband pass before Ms. Copeland. Again, I find that there was absolutely no reason for the Defendant to be on the title if she was acting as agent for the Claimants. To run the risk of you dying before your mere agent and giving her the property (essentially) is not something that accords with logic and common sense.

[45] The Defendant, in strong cross-examination, conceded that she had no evidence that herself and the Claimants agreed to her having a 50% share in the property. However, it is my finding that, on the Defendant's evidence, the original agreement

was for the Defendant and the 1st Claimant to have an "equal standing" in the investment. The 2nd Claimant was later added by agreement between the 1st Claimant and the Defendant[13].

[46] The 2nd Claimant denied writing the letter to the Defendant dated September 11, 2022 and exhibited at paragraph 8(c)(vi) as AAWC-1 of the Defendant's affidavit. The Defendant claims, in that letter, that the 2nd Claimant acknowledged her interest in the property and was not seeking to challenge same.

[47] In cross-examination, the 2nd Claimant said the letter was taken to him by the Defendant's boyfriend and he simply went to a notary and signed the letter in the notary's presence without reading same. I find this highly unlikely and I reject same. The 2nd Claimant also admitted that he made no affidavits refuting the letter after seeing the letter in the 1st Affidavit in Response filed by the Defendant. I find that the 2nd Claimant's refuting of the letter to be a recent fabrication on his part.

Conduct if Not Words

[48] According to the Claimants, they paid the deposit of $720,000.00 on January 1, 2016. They made a further payment of $413,735.58 on September 15, 2017. They said the source of this money was their savings from their respective jobs.

[49] This evidence was partially disputed by the Defendant. In her affidavit in response (her first affidavit sworn on the 2nd April 2024), the Defendant said that she was the one who paid the deposit via a manager's cheque from her Scotiabank account. She exhibited the cheque at exhibit AAWC-3. She agreed that the further sum was paid by the 1st Claimant.

[50] The Defendant said that the money came from her savings and profits earned from her business.

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[13] See paras 8(c)(iii) and (v) of the Defendant's 1st Affidavit in Response.

[51] When challenged with this evidence, the 1st Claimant made, what I find to be a curious statement in response in her first solo affidavit. At paragraph 5n she admits paragraph 8(e) of the Defendant's affidavit, except that she challenged that the money came from the Defendant's bank account. The 1st Claimant mentioned setting up a joint Jamaica National account with the Defendant with a balance of J$3m at one point. But none of this, in my view, satisfactorily refutes the Defendant's assertion that it was she who paid the deposit from her monies in the Scotiabank account.

[52] In a lengthy exchange during cross-examination, the 1st Claimant said as follows in answer to counsel (the questions were renumbered here for convenience):

1 *Q: Have you seen the Scotia Bank receipt on the very next page of Ms. Copeland's Affidavit? [Exhibit AAWC 3 – B shown]*
A: Yes.

2 *Q: You remember seeing this before in Ms. Copeland's affidavit?*
A: Yes.

3 *Q: You see where it says Gore Development?*
A: Yes.

4 *Q: You see the $720,000.00?*
A: Yes.

5 *Q: You agree that this receipt is evidence that the $720,000.00 came from Ms. Copeland Scotia Account?*
A: Yes. But is money that I gave her. It was supposed to go into the JN Account. But she took the money and put it in her Scotia Account.

6 *Q: This JN Bank Account is this account with You, Mrs. Copeland and Mrs. Copeland's mother?*
A: Yes.

7 *Q: You have access to the bank statements?*
A: I used to have access. But after a while, I wasn't getting anything from them.

8 *Q: You are an account holder on the account?*
A: Yes.

Q: You are saying that you don't have access to the account?
A: No. I only got an email a couple of times from them. It wasn't showing any money in there. Just a few dollars.

Q: Did you put that allegation in the affidavit. That she took money from the JN Account and put it in her scotia account?
A: No I did not.

Q: You have put forward bank statements from Franklin Mint Credit Union?
A: Yes.

Q: These are in your 3rd affidavit?
A: Yes.

Q: These monies you gave to Ms. Copeland, you transferred it to her?
A: I think she came up to the United States. I was throwing partner with one of my church sister. And I know for sure. I put $US 6,000.00 in her hand.

Q: In which one of your affidavits is that evidence?
A: I don't know if its in any affidavit. I am telling you. I know that Gore was coming up.

Q: You told this court that you started looking in 2016 right?
A: I was looking from before that.

Q: Mrs. Mullings you said you gave Ms. Copeland $US 6,000.00 in her hand?
A: Yes.

Q: For her to carry down to Jamaica?
A: Yes.

Q: What is the limit for carrying cash?
A: $US 10,000.00

Q: This $US 6,000.00 you gave her, there is no receipt that you gave her?
A: I change my cheque. My tax money go into my account and I took it out.

Q: Have you provided this court with that evidence ma'am?

A: That was from 2016. I don't have that receipt. I think when I went to the bank, they could not go back that far. I know for sure. From 15, 16, 17 18 I got my tax returns.

21 Q: Have you put this documentary evidence before the Court?
A: No.

22 S:Suggestion, you did not put it before the Court, because it is not true?
A: It is true. I would not lie to the Court. I would put my hand up to god.

[53] It is my finding that the 1st Claimant was not being truthful when she said that the monies the Defendant used to pay the deposit came from her – the 1st Claimant. I reject the argument that it came from the JN Account to be a recent fabrication. She had the opportunity, in the Affidavit filed in response to the Defendant's first affidavit, to clearly state that the money in the Scotia Account came from the JN Account, but she did not.

[54] It is my finding that the 1st Claimant, as an account holder, was entitled to get a statement and could have gotten a statement to verify that there was such a transfer from JN to the Defendant's Scotia Account to pay the deposit, yet this was not done and the reasons proffered for this are not on strong footing at all and rejected. It is my finding that this has seriously undermined the credibility of this position.

[55] At paragraph 8(i) of her 1st Affidavit in Response, the Defendant said that it was she and the 2nd Claimant who paid the other initial costs. This included part of the cost of insurance in the transaction; and a part of the processing fee which sum she paid through a loan of $450,000.00 which she secured.

[56] In responding to this assertion, the 1st Claimant said, at paragraph 5(r) of her 1st solo affidavit that any monies used by the Defendant either was given to the Defendant by the 1st Claimant or came from their joint business venture. There isn't even a clear and coherent response where one is demanded given the assertion made by the Defendant. Again, the credibility of the Claimants is undermined and I prefer the evidence of the Defendant in this regard.

Conclusion on Acquisition Phase

[57] In all the circumstances, I am satisfied, that the Claimants have failed to rebut the presumption that there was an initial agreement for the Defendant to share in the property as a joint tenant in equal shares with both Claimants. I find that there was, at the very least, an agreement for the property to be held jointly between all three parties – each Claimant and the Defendant.

[58] It is my finding that the position taken by the Claimants in seeking to refute the initial agreement is a recent fabrication and unsupported by their evidence. I did not find their evidence as to what happened at acquisition to be credible.

DID THE INTENTION CHANGE DURING THE COURSE OF DEALING?

[59] I now turn to the question of whether the agreement changed during the course of dealing. It is my finding that the agreement changed during the course of dealing with the property.

[60] It is my finding that the Defendant and the 1st Claimant jointly paid the mortgage contributions for the property at the beginning.

[61] At first, in their joint affidavit, the Claimants asserted, at paragraph 7(i) of the said affidavit, that they started paying the mortgage to Sagicor on a monthly basis of about $137,000.00. They said the monthly payments were made by them only from commencement.

[62] The Defendant, in her affidavit in response, specifically refuted this evidence and provided evidence of the sums of money being drawn in the months as agreed by them.

[63] In response to this, the 1st Claimant said that any monies paid by the Defendant came from the joint business venture between the 1st Claimant and the Defendant. This stands in stark contrast to the assertion made in the joint affidavit of the Claimants, where they said that they were the ones who made all the mortgage

payments. The assertion from the 1st Claimant in her first solo affidavit at paragraph 8(t), I find, was a convenient explanation and not true.

[64] There were other instances where the 1st Claimant sought to walk back assertions on the dealings with the property from what was said in the joint affidavit after the Defendant refuted them in her first affidavit.

[65] The Claimants asserted that they solely carried out maintenance and/or improvement works and/or repairs to the property and the Defendant gave no financial or other assistance. When refuted by the Defendant, the 1st Claimant then said, at paragraph 5(z) of her first solo affidavit, that she wasn't even aware of maintenance and construction work being done on the property by the Defendant.

[66] They specifically asserted that the property taxes for the premises were paid solely by them. When confronted by the receipts for payment of taxes by the Defendant's affidavit, the 1st Claimant said that the monies the Defendant used came from either monies sent to her by the 1st Claimant or from the 50% share in the joint business venture. There was no initial mention that the 1st Claimant sent the Defendant money specifically for taxes initially.

[67] Indeed, it is my finding that over the years, up to the time of the construction of the extension to the back of the property, the parties slowly started to act as though they had separate legal interests in the property. Each side seemed to be carrying out actions to protect their particular turf. This culminated in the Claimants unilateral action to expand the dwelling home.

[68] I did not get too much into the issues regarding the legality of the structure itself as that is irrelevant to these proceedings. But the effect of this action is that the Claimants took action to expand the home without consulting the Defendant. This, in my view, signalled a firm shift in the stance of the Claimants.

[69] The Defendant, likewise, also shifted her stance and began to assert her rights as an owner of the property more aggressively. She moved into the property and

removed the tenant that had been renting same. She also sought to restrict access to the workers sent by the Claimants to do jobs on the expansion. This was confirmed by the affidavit of Mr. Jermaine Clarke whose evidence I largely accepted as being truthful and he was not much assailed on cross-examination.

[70] In her third affidavit, the Defendant detailed further evidence of the extent of her contributions. At the trial of this matter, counsel for the Claimants sought permission to amplify the evidence of the 1st Claimant. I refused on the basis that he could not rely on part 29 of the CPR to amplify an affidavit.

[71] In his submissions, counsel sought to argue that the Court's ruling prevented his clients from presenting their case. I would say, however, that counsel had the proposed affidavit filed and served on him from as far back as May 2025. Counsel knew that there was an application before the Court since around that time for the Defendant's 3rd Affidavit to be allowed to stand. Counsel would have been aware that there was a 50% chance that the application could be granted. He ought to have used the time from May 2025 to the hearing of the application to determine whether he wanted to respond by a further affidavit in the event the outcome was not in his favour.

[72] There is no indication that he asked the learned judge, who ruled in favour of the Defendant, for permission to file a further affidavit and it was refused. I found it therefore unfair and unreasonable for the Claimants to come to trial and seek to make general comments or any comments at all on the 3rd Affidavit of the Defendant as:

(i) It was not an ex-improviso document which took them by surprise so they ought to have been prepared with a response to same from months before the trial and be ready to proceed to file and serve same;
(ii) In the modern era of litigation under the CPR, we are dealing with open handed litigation and the substance of your evidence ought to be disclosed to the other side unless good reason is shown for other

course of action. I found no such good reason here in the circumstances;

[73] That said, I again, found the Defendant to be a credible witness generally speaking and accepted her evidence in this regard.

IN WHAT SHARE SHOULD THE PROPERTY BE IMPUTED BY THE COURT TO BE HELD?

[74] As I have found clear evidence of a change in the intention of the parties as to the holding of the beneficial share, I would seek to say in what percentage they should hold same.

[75] In my view, being unable to ascertain what the true share they intended was, it is my finding that a fair share would be 1/3rd each of the **original building** prior to the expansion.

[76] I say this because the expansion, as admitted by the Defendant, was financed primarily by the Claimants. Even the Defendant had to admit that the gate upgrade was financed solely by the 1st Claimant.

[77] The Defendant has, in my view, made substantial contributions to the acquisition of the property as well as paid what I found to be her agreed share of the mortgage and did indeed, I find, ran the joint venture business (a large portion of the proceedings of which went towards payments of the mortgage until the tenant came).

[78] The 1st Claimant, I found, largely exaggerated her income and contributions. Indeed, there was a sequence in her testimony where she alluded to receiving a large portion of income “under the table” from a Jewish employer. She later sought, as she has done with other assertions, walk it back by saying that the sum of US$20,000.00 per week was only when she could get the work after counsel Mr. Moulton started to press her on whether she documented this income.

[79] She said she was paid by cheque from this employer. When asked for proof of the cheque deposits, she then switched and said the cheque sums were for small amounts like US$200.00 and the rest paid in cash.

[80] Of note, whilst bank statements were shown for both Claimants, neither of them have shown any tax returns, which they are mandated by law to file in the United States.

[81] I found the Defendant to be more credible, forthright and frank in her answers in cross-examination. I did not find her to be shaken on cross-examination. Overall, I preferred her as a witness to the Claimants.

CONCLUSION

[82] It is my finding that the Claimants have successfully shown that during the course of the dealing with the property after its acquisition, the presumption of the parties sharing the beneficial interest in the disputed property as joint tenants was rebutted.

[83] Whilst it is my finding that they intended to share the legal and beneficial interest in the property equally at the outset, the intention changed during the course of their dealings with the property and, at this point, there is no longer such intention.

[84] As I am unable to ascertain, from the evidence, any common intention to share the beneficial interest in the property in any particular manner, it is my finding that a fair distribution of the beneficial interest in the property would be 1/3rd each in the building before the extension was added by the Claimants.

Concerning the Claims for Relief.

[85] I find that the Claimants' claim for recovery of possession fails in light of the fact that I have found the Defendant to be a beneficial owner of the property. She would therefore have the legal and equitable right to occupy the property.

[86] However, the Defendant would have no absolute right to restrict the servants and/or agents of the Claimants from entering the premises except for that area of the property in which she resides and uses as her dwelling.

[87] Likewise, the Claimants are not entitled to mesne profit or occupational rent for use of the property. They have provided this Court with no evidence that the Claimant has occupied any portion of the property beyond that to which she would be entitled as a legal and beneficial owner.

[88] I would also disallow their claim for the Defendant to be refunded her mortgage payments or for it to be treated as rental for the property. She paid her mortgage as an owner and it is not therefore to be treated as rent.

[89] The Claimants are entitled, as co-owners, to an account of the rental income collected by the Defendant. Authority for this position comes from the case of ***Johnson v Johnson***[14].

DISPOSITION

1 The joint tenancy of property known as Lot 637, part of Bellefield Estate now called Montego Bay West Village Phase 2, St. James and registered at Volume 1509, Folio 516 of the Register Book of Titles in the joint names of the first Claimant, Paulette May Brooks-Mullings, the second Claimant, Weldon

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[14] [2023] JMCA Civ 10 at para 34.

Constantine Mullings and the Defendant, Annette Alicia Watson Copeland is severed.

2 It is declared that the Defendant has a 1/3rd beneficial interest in the land and original structure of the dwelling house (up to the date when the extension was started by the Claimants) of the property known as Lot 637, part of Bellefield Estate now called Montego Bay West Village Phase 2, St. James and registered at Volume 1509, Folio 516 of the Register Book of Titles.

3 The Defendant shall, within 30 days of this order, give an account to the Claimants, through her Attorneys-at-Law, of all rental collected for the property by her since about May 2022 to the date of this hearing.

4 The Claimants claim for recovery of possession is refused.

5 Liberty to apply.

6 The Claimants are to recover 50% of their costs in the Claim less whatever sum they have been awarded from the previous costs order in this matter.

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Dale Staple
Puisne Judge